IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FIFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And

THE HON'BLE MR JUSTICE Ch.S.R.K. PRASAD

WRIT PETITION NO : 13796 of 2004

Between:

K.Kammi Naidu, S/o.Venkatesh,
R/o.Bakarapet Village, Sidhout Mandal,
Cuddapah Dist.

..... PETITIONER

AND

1 The Collector & District Magistrate, Cuddapah.
2 The Chief Secretary, Government of A.P., Hyderabad.
3 The Superintendent of Central Prison, Cherlapalli.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Habeas Corpus under Art 226 of the Constitution of India directing the Respondents to produce Sri Balaneni Bala Vemaiah, S/o.Chinna Vemaiah, now detained in Central Prison, Cherlapalli, before this Hon'ble Court and he may be released forth with after declaring that his detention is illegal and void.

Counsel for the Petitioner: MR. C.PADMANABHA REDDY

Counsel for the Respondents: THE ADVOCATE GENERAL

The Court made the following :

ORAL ORDER: (per GB.J.)

The Writ Petition is filed challenging the detention order passed by the Collector and District Magistrate, Cuddapah-1st respondent, dated 24.5.2004 as approved by the Government in GO.RT.No.3577, General Administration (Law & Order.II) Department, dated 6.7.2004.

2. The grounds of detention, as can be seen from the order of detention, are as follows:

> "GROUNDS OF DETENTION OF SRI BALANENI BALA VEMAIAH S/O CHINNA VEMAIAH, AGED ABOUT 30 YEARS, RESIDING AT DOOR NO.1/18, RAMULA DEVALAYAM STREET, BHAKARAPET VILLAGE OF SIDHOUT MANDAL, CUDDAPAH DISTRICT UNDER SECTION 3(1), (2) OF THE ANDHRA PRADESH PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DACOITS, DRUG OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND LAND GRABBERS ACT, 1986 (ACT NO.1 OF 1986).
>
> O.R.No.29/2003-04, dated 14.7.2003
>
> On 14.7.2003 at 10.00 AM on reliable information the Forest Range Officer, Vempalli along with other field officers proceeded to the Malemmamora locality of Bonagondi Cheruvu beat and noticed you and your accomplice hiding in the bushes. On observing the movement of Forest Officials you ran away from the scene of offence. The Forest officials searched the nearby bushes and found 58 Red Sanders weighing 1529 Kgs valued at Rs.70,334/-

without any hammer marks of the Forest Department. Hence you were charged under Section 379 of IPC (Theft of Govt. property) and U/s. 20(1) c (iii), (vii) and (x) of A.P. Forest Act I of 1967, and rule 3 of A.P. Sandal Wood and Red Sanders Wood Transits Rule of 1969. Thus it is quite evident that you are committing offences of illicit cutting, dressing and transportation of Red Sanders Wood causing destruction of valuable Red Sanders which is endangered species and National Wealth.

O.R.No.125/03-04, dated 21.1.2004

On 21.1.2004 at about 9.00 AM on receipt of reliable information the Forest Range Officer, Cuddapah and other forest personnel proceeded to Minipercolation Tank at Addakonda Locality, Palakonda Reserve Forest of Bhakarapet Beat, when the Forest Range Officer, Cuddapah and other forest officials while searching noticed you and your accomplice. On observing the forest officials you and your accomplice ran away into the Reserve Forest leaving behind a stock of 50 Red sander logs weighing 981 Kgs valued at Rs.45,126/-. During the further course of investigation and efforts to arrest the accused, you, Sri Balineni Bala Vemaiah was arrested on 9.2.2004. You have admitted the offence and gave confessional statement. Hence you were charged under Section 379 IPC (theft of Govt. property), U/s. 20(1) © (iii) and (x) of A.P. Forest Act, 1967 and A.P. Forest Produce Transit Rules, 1970 and A.P. Sandal Wood and R.S. Wood Transit Rules, 1969.

O.R.No.186/2003-04, dated 30.3.2004

On 30.3.2004, on receipt of reliable information, the Forest Range Officer, Vempalli and other forest officials proceeded to Devuniguttalu locality in Bonagondi Cheruvu Beat and noticed the accused Sri Balineni Bala Vemaiah and another person. You and your accomplice on noticing the forest officials, ran away. The Forest officials tried to catch you but could not catch. On searching the nearby bushes 9 Red Sander logs weighing 327 Kgs valued at Rs.15,042/- were found. Hence you were charged U/s. 379 IPC (theft of Government property) and Section 20(i) C (ii), (iii), (iv) and (x) of A.P. Forest Act, 1967. Thus it is quite evidence that you are committing offences of illicit cutting, dressing and transportation of Red Sanders Wood causing destruction of valuable Red Sanders which is endangered species and National Wealth.

O.R.No.5/2004-05, dated 15.4.2004

On 15.4.2004, on receipt of reliable information, the Forest Range Officer, Vempalli along with other forest officials proceeded to Aremanubanda locality of Idupulapaya beat of Vempalli Range

> noticed you and your accomplice cutting and stocking the Red Sanders. On noticing the Forest officials you have tried to escape, but the forest officials caught hold of you. On enquiry you have accepted the offence and given statement to that effect. On inspection of the area near bushes 10 Red Sander logs weighing 258 Kgs valued at Rs.12,900/- were found. Thus you and your accomplice entered into Reserve Forest illegally, carried illicit cutting and storage of Red Sanders for transporting. Hence you were charged U/s. 379 IPC (theft of Government property) and Section 20(i) C (iii) and (x) of A.P. Forest Act, 1967. Thus it is quite evident that you are committing offences of illicit cutting, dressing and transportation of Red Sanders Wood causing destruction of valuable Red Sanders which is endangered species and National Wealth".

3. Basing on the above grounds, the learned Senior Counsel Mr.C.Padmanabha Reddy appearing for the petitioner, without going into the other aspects of the matter, submits that the detaining authority has not only taken into consideration the provisions of Section 379 IPC covered by Chapter XVII of IPC, but also Section 20 of A.P. Forest Act. He further submits that this act of the detaining authority would amount to irrelevant consideration of the grounds of detention inasmuch as the provisions contained in Forest Act do not cover the definition of 'goonda' as defined in Section 2(g) of A.P. Prevention of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short the Act). He also submits that this issue was already considered by this Court in Writ Petition No.11373 of 2004, dated 9.8.2004. Thus, he submits that the order of detention is illegal and the same is liable to be quashed.

4. We have also heard the learned Advocate General on this aspect.

5. Inasmuch as the order of detention is vitiated by irrelevant considerations, viz., the detaining authority not only taken into consideration the Chapter XVII of IPC, but also the Forest Act, the order of detention is liable to be set aside in its entirety following the ratio in the Judgment of this Court in Writ Petition No.11373 of 2004, dated 9.8.2004.

6. Accordingly the Writ Petition is allowed and the order of detention is quashed. The detenu shall be released forthwith, if he is not required in any other case.

(G.BIKSHAPATHY, J.)

25th August, 2004

(CH.S.R.K.PRASAD, J.)

SSR

Copy to the Hon'ble Sri Justice G.Bikshapathy (for His Lordship's kind perusal)

To

1.The Collector & District Magistrate, Cuddapah.
2.The Chief Secretary, Government of A.P., Hyderabad.
3.The Superintendent of Central Prison, Cherlapalli.

4.2CCs to the Advocate General, High Court of A.P. (OUT)

5.2CD copies.